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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,871	11/17/2003	John M. Epley	103419-0003	5600
35940	7590	07/31/2007		
ATER WYNNE LLP 222 SW COLUMBIA, SUITE 1800 PORTLAND, OR 97201-6618			EXAMINER HOEKSTRA, JEFFREY GERBEN	
			ART UNIT 3736	PAPER NUMBER
			MAIL DATE 07/31/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/715,871

Applicant(s)

EPLEY, JOHN M.

Examiner

Jeffrey G. Hoekstra

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 20-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Notice of Amendment***

1. In response to the amendment filed on 05/23/2004, amended claim(s) 1, 7, and 20 is/are acknowledged. The current rejections of the claim(s) 1-8 and 20-23 is/are *withdrawn*. The following new and reiterated grounds of rejection are set forth:

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Densert et al (US 6,159,171, hereinafter Densert) in view of Galiana et al. (US 5,942,954, hereinafter Galiana).

4. Densert et al (US 6,159,171) discloses the claimed invention including the following:

5. For claims 1, 7, and 20-23, Densert discloses a head stabilized medical device (1), comprising:

- plural different vestibular-parameter measuring/ modifying vestibular-parameter data delivering and data receiving devices (elements 19,20,28 and 30) anchored to said frame; and
- a communication structure (the wires as seen in Figures 1-2), for operatively connecting, transmitting and receiving, vestibular-relevant parameter data devices to

Art Unit: 3736

a computer structure (29) (column 4 lines 49-52) capable of executing real-time vestibular diagnosis/treatment algorithms with feedback responses (column 7 lines 3-6) effective to alter air-pressure stimuli.

6. For claims 2 and 8, Densert discloses air-pressure modifying vestibular measuring/modifying devices (column 1 lines 6-48).

7. For claims 3-6, Densert discloses a sound delivering device creating pressure waves through air removably insertable into the ear comprising a tubular body (24) with a tapered insertion bulb or nozzle (25) effective to sealably engage the ear, and capable of piercing the tympanic membrane, and having a digitally manipulated maneuverable enlargement region (17 and 18) connected to said body at a proximal location of the inserted end.

8. Thus, Densert discloses the claimed invention except for explicitly disclosing or explicitly showing a stabilized head-dependent wearable frame structure configured to control a visual input by at least partially obstructing the subject's normal visual range. Galiana teaches and shows (as best seen in Figures 3 and 4) a vestibular measuring/modifying device (30), comprising: a stabilized head-dependent wearable frame structure (32) configured to control a visual input via a display (12) by at least partially obstructing the subject's normal visual range (column 2 line 39 – column 3 line 32 and column 4 lines 37-52). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the vestibular diagnostic device as taught by Densert, with the vestibular diagnostic device as taught by Galiana for the

purpose of increasing the diagnostic efficacy of a vestibular diagnostic device with positional stabilization for accurate correlation of data.

***Response to Arguments***

9. Applicant's arguments with respect to claims 1-8 and 20-23 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey G. Hoekstra whose telephone number is (571)272-7232. The examiner can normally be reached on Monday through Friday, 8:00 a.m. to 5:00 p.m. EST.

Art Unit: 3736


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max F. Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/J.H./

Jeff Hoekstra

Examiner, Art Unit 3736

  
MAX F. HINDENBURG  
SENIOR PATENT EXAMINER  
TECHNOLOGY CENTER 3700